

ENTERED

October 26, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION


LUIS CARLO TURRUBIARTES §
 §
VS. § CIVIL ACTION NO. 7:18-CV-227
 §
LORIE DAVIS, Director, Texas Department of §
Criminal Justice, Correctional Institutions §
Division. §

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C § 2254, which petition had been referred to the Magistrate Court for a report and recommendation. On September 11, 2018, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner's § 2254 Petition be **DISMISSED** without prejudice and that a Certificate of Appealability be **DENIED** upon the issuance of this Court's final order.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.¹ Finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, Petitioner's § 2254 Petition is **DISMISSED** without prejudice. A Certificate of Appealability is **DENIED**.

SO ORDERED this 26th day of October, 2018, at McAllen, Texas.



Randy Crane
United States District Judge

¹ "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Douglas v. United States Service Auto. Ass'n*, 79 F.3d 145, 1420 (5th Cir. 1996) (quoting Fed. R. Civ. P. 72(b) advisory committee's note (1983)) *superceded by statute on other grounds by* 28 U.S.C. § 636(b)(1), *as stated in ACS Recovery Servs., Inc. v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n. 5 (5th Cir. April 2, 2012).